

Defendant's MSJ, pp. 3-9. The parties fully briefed these issues (Plaintiff filed both an initial Response (Doc. #79-80) and Objections and a Motion to Strike (Doc. #86)), and the MSJ is pending.

Without any new evidence (he simply re-files the evidence he previously filed) or argument (he simply copies entire sections from his MSJ Response), Plaintiff now brings his own dispositive motion arguing the same things that he argued in response to Defendants' MSJ – that FLSA jurisdiction is proper and that he is entitled to back pay wages under his retaliation claim.² Plaintiff asks for no affirmative relief on his claims, but instead only asks this Court, in essence, *to deny Defendant's Motion*. This is not a proper basis for summary judgment. Accordingly, Defendant objects to Plaintiff's attempt to further brief the FLSA jurisdiction and back damages issues and asks this Court to deny Plaintiff's Motion.

II. RESPONSE TO PLAINTIFF'S MIRROR-IMAGE MSJ

Plaintiff's Motion addresses the identical issues that the parties previously briefed and, accordingly, Detail Solutions incorporates by reference its Brief (Doc. #75), Appendix (Doc. #76) and Reply (Doc. #85) filed in Support of Defendant's MSJ as if fully set forth herein. Defendant's prior briefing includes arguments, authority and evidence that are fully responsive to Plaintiff's Motion. As more fully set forth in this prior briefing, Plaintiff's Motion should be denied because, among other things:

- (1) As stated more completely in Defendant's MSJ, Plaintiff cannot establish individual coverage under the FLSA because, as a local car washer and detailer, Plaintiff was involved in purely intrastate activity and had no impact on interstate commerce. *See* Defendant's MSJ Brief at pp. 4-6; Defendant's MSJ Reply at pp. 3-4.

² Plaintiff's Partial MSJ *copies verbatim* its Response to Defendant's MSJ. *Compare* Plaintiff's Response to Defendant's MSJ, pp. 6-7, par. 19 (addressing individual coverage), pp. 7-8, par. 20-21 (addressing enterprise coverage), and pp. 8-10, par. 22-24 (addressing back damages) *with* Plaintiff's Partial MSJ, p. 5, par. q (individual coverage), pp. 5-6, par. r-s (enterprise coverage), and pp. 8-10, par. z-aa (back damages).

- (2) As set forth in Defendant's MSJ, Plaintiff cannot establish enterprise coverage under the FLSA because Detail Solutions is a local car washing company that does no business outside of Texas (and the *ultimate-consumer exception* applies with respect to any supplies shipped interstate). *See* Defendant's MSJ Brief at pp. 6-7; Defendant's MSJ Reply at pp. 4-6.
- (3) As set forth in Defendant's MSJ, Plaintiff should be barred as matter of law from seeking back wages under his retaliation claim or seeking additional compensation for the work he performed because of his status as both an undocumented worker, and the manner in which he deceived Detail Solutions to secure employment. *See* Defendant's MSJ Brief at pp. 7-9; Defendant's MSJ Reply at pp. 1-2; *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (holding that undocumented workers are not entitled to back pay damages).
- (4) Plaintiff relies on objectionable evidence in support of his arguments, including conclusory statements from his own affidavit and unauthenticated internet print outs. *See* Defendant's MSJ Reply at pp. 2-3.

III. CONCLUSION

For these reasons and the reasons stated in Defendant's MSJ, Plaintiff's Motion for Partial Summary Judgment should be denied and Defendant should be awarded such additional relief as the Court deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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